IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.235 OF 1991.

Dattu Gopala Patil
since deceased by his heirs

Tarabai Dattu Patil
since deceased by her heirs

Naikoba Dattu Patil
and others .. Appellants
(Heirs of Org. Def.No.1)

vs.

Ramchandra Dattatraya Jadhav
and others .. Respondents.
(Original Plaintiff)

Shri B.P.Apte, Advocate for the Appellant.

Mr. , Advocate for the Respondent.

CORAM : S.R.SATHE, J.

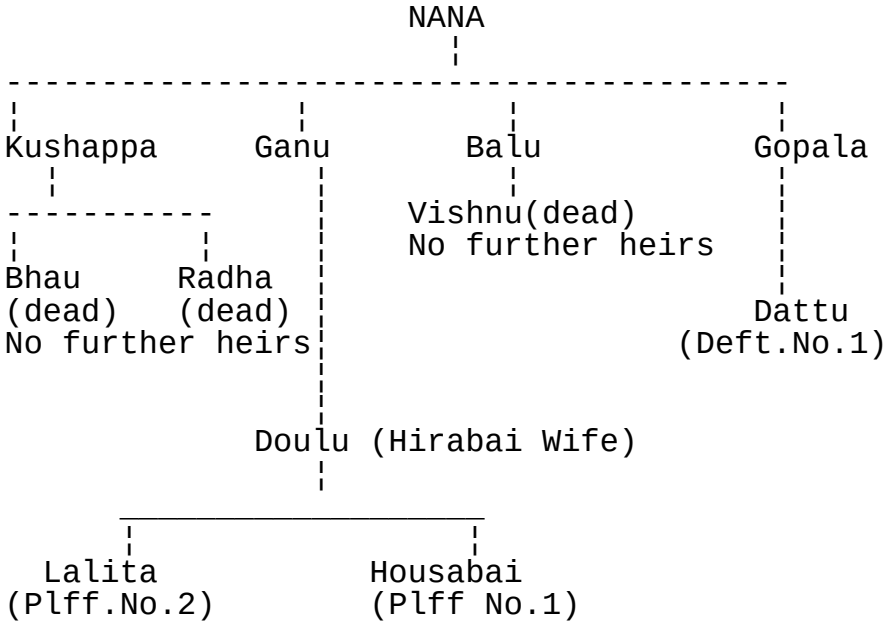
DATED : 6TH Dec., 2004.

JUDGMENT :

1. Being aggrieved by the judgment and order passed by the Court of Additional District Judge, Kolhapur in Regular Civil Appeal No. 256 of 1984 whereby the judgment and order passed in Regular

Civil Suit No.41 of 1979 by the Court of Jt. CJJD Ichalkaranji, declaring that plaintiff's are the owners of the suit property was confirmed and appeal was dismissed, the original defendants have preferred this second appeal. For the sake of convenience hereafter the parties shall be referred to as plaintiffs and defendants.

2. In order to appreciate the facts giving rise to this appeal it would be worthwhile to reproduce the genealogy showing the relation between the parties.



. The suit properties, which include landed properties and house property, were the ancestral properties of plaintiff and defendant no.1 and defendant no.21 i.e. Hirabai Daulu Patil. The original ancestor Nana had four sons, namely Kushappa, Ganu, Balu and Gopala. Kushappa had one son by name Bhau and daughter Radha. Bhau died issueless. Genu had one son Doulu, defendant no.21, Hirabai is wife of Doulu, while plaintiffs 1 and 2 are Doulu's daughters. Doulu died in the year 1934-35 leaving behind wife and two daughters. During the pendency of the suit defendant no.21 Hirabai died, so also Hausabai and the heirs of plaintiff no.1 were brought on record. Balu had son by name Vishu. Vishu died issueless. When all the co-parceners were residing in the joint family, all co-parceners expired and the joint family property came in possession of Hirabai. Afterwards, defendant No.2 Dattu Gopala Patil filed Regular Civil Suit No.221 of 1950 in the Court of CJJD, Ichalkaranji for possession of the suit properties on the ground that he was sole surviving co-parcener and defendant no.21 had no right in the suit property.

3. In that suit defendant Nos.1 and 3 to 6 were ex-parte. Without giving any notice to defendant no.2 i.e. present defendant No.21, the defendant no.1 had taken her thumb impression by deceiving her. Thus, according to plaintiff when defendant no.1 had no right in the suit property he got compromise decree by practicing fraud upon defendant no.21. Hence plaintiff prayed for declaration that the said compromise in Regular Civil Suit No.221/1950 was obtained by and that plaintiffs have become the owners of the suit property.

4. The defendant no.1 opposed the suit claim by filing written statement at exhibit 17. It is his contention that the present complainants have no claim whatsoever over the suit property and the suit was not filed in time. Defendant no.1 admitted the genealogy but contended that present plaintiffs have no right, title and interest in the suit property. According to him he was the sole surviving co-parcener and as such he became the owner of the suit property. Half portion of

the suit property was in possession of defendant no.1 and remaining half was in possession of Radhabai. As Radhabai was illegally disposing of the suit property he had filed regular civil suit no.221 of 1950 against defendant no.21 and Radhabai. He also contended that as per the compromise decree all the suit properties were given to defendant no.2 in lieu of her maintenance except Revision Survey No.118/2. He also contended that Defendant no.1 practiced fraud upon defendant no.21 and obtained compromise decree. He contended that the plaintiff's have not given particulars of fraud. Hence on all these grounds he prayed for dismissal of the suit.

5. On these pleadings the learned trial judge framed issues at exhibit 20. After considering the evidence adduced by both the parties, the trial judge came to the conclusion that the defendant no.1 practiced fraud upon defendant no.21 and obtained her thumb impression upon compromise decree in Regular Civil Suit No.221/1950. The trial Judge, however, held that in view of the provisions of section 14(1) of

Hindu Succession Act, 1956, the plaintiff's mother had become the absolute owner of the suit property and after her, plaintiff became the owner of the suit property. He, therefore, decreed the suit accordingly.

6. The above mentioned order was challenged by the defendants in Regular Civil Appeal No.256 of 1984. The first appellate court held that the trial court had rightly held that the provisions of section 14(1) of Hindu Succession Act 1956 were applicable and defendant no.21 had become the full owner of the suit property. He, therefore, dismissed the appeal.

7. Being aggrieved by the above-mentioned order, the heirs of original defendant No.1 have preferred this second appeal.

8. From the perusal of the record it appears that on 22.4.1991 this court has passed the following order "Ground No.10 raises substantial question of law. Admit." The said ground no.10 reads as under :

"Whether life interest conferred by a decree enlarges into an absolute right with respect of the suit property in view of sections 14(2) and 15(1)(a) and 18 of the Hindu Succession Act ?"

9. In this appeal before me Shri Gokhale, learned advocate for the appellants/defendants has urged only one point. He submitted that as per the compromise decree passed in Regular Civil Suit No.221/1950 limited interest was created in favour of Radhabai. She was given such interest in all the lands accept the land bearing revision survey no.118 Hissa no.12. He, therefore, contended that the case squarely falls within the four corners of section 14(2) and not under section 14(1) of Hindu Succession Act, 1956. So, according to him the life interest created in favour of defendant no.21 by virtue of the said decree is not enlarged into absolute ownership, as contemplated by Section 14(1) of the Hindu Succession Act. So, the only substantial question of law involved in this appeal is whether right created in favour of

defendant no.1 by virtue of compromise deed whereby the suit properties were given to her in lieu of maintenance during her lifetime became the absolute property of defendant no.21 by virtue of section 14(1) or whether it remained the restricted property as contemplated by Section 14(2) of the Hindu Succession Act.

10. It would be worthwhile to see what Section 14 of the Hindu Succession Act says. It reads as follows:

(1) "Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner"

Explanation:- In this sub-section 'property' includes both movable and immovable property acquired by a femal Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own

skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquire by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.

In AIR 1966 SC, 1879 the Supreme Court examined the ambit and object of this section and observed "the property possessed by a female Hindu as contemplated under the section is clearly property to which she has acquired some kind of title, whether before or after the commencement of the Act. In fact Section 14(1) sets out various modes of acquisition of the property by female Hindu and indicates that the section applies only to the property to which the female Hindu has acquired

some kind of title. The Supreme Court considered the inter alia relationship of sub section(1) and sub section (2) in Badri Pershad vs. Smt. Kanso Devi, AIR 1970 SC 1963 and observed that the later was in the nature of proviso to the principle rule laid down in the former. It observed :

> 1. Rights in some property might have accrued to a Hindu female as a limited estate, and the instrument, decree order or award might confirm it or declare it.
>
> 2. Rights in some property as limited estate might accrue to her for the first time under the instrument, decree order or award.
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> It is only in relation to the latter that sub-section (2) applies. While in respect of the former Sub-section (1) applies. Thus it will depend as to how the document is worded. Whether it is merely declaratory or constitutive of the rights.

So, ultimately we have to find out whether by virtue of the decree passed in 221/1950 the right which was already pre-existing in favour of defendant no.21 was confirmed or whether any new right was created in her favour for the first time under the instrument namely the compromise pursis. True copy of the said compromise pursis is at exhibit 23. From the perusal of clause 1 and 2 of the said compromise pursis it is very clear that all the properties except Revision Survey No.118 Hissa No.12 were given to the defendant no.21 and the same were given in lieu of her right of maintenance. It is clearly mentioned in clause 1 "

So, it is crystal clear that the said properties were given to her in lieu of her maintenance. Admittedly it was her pre existing right of maintenance and that was only confirmed and for that these properties were given to her. It was

tried to be argued on behalf of the appellant that revision survey No.118 was already given to her, so, it can not be said that the other properties were given in lieu of maintenance. However, this argument can not be accepted for the simple reason, that, had it been so, then in the compromise pursis it would not have been mentioned that the said properties were given in lieu of maintenance. So it appears that there is no substance in the arguments advanced by the learned advocate for the appellants in this behalf. From the wording of the said compromise pursis and the other evidence on the record, the trial court has rightly held that the present case does not fall under section 14(2) of the Hindu Succession Act, but it squarely falls under section 14(1) of the Hindu Succession Act and naturally defendant No.1 had become the absolute owner of the said property. So the interest which was created in favour of the defendant no.1 definitely enlarged and turned into absolute ownership as the provisions of section 14(1) were applicable. Thus, it is very clear that the findings recorded by both the courts below are legal and correct.

There is no necessity to interfere with the same.

. In this view of the matter there is no substance in this appeal. The appeal is dismissed.

. Considering the peculiar circumstance and the fact that the defendants have not even appeared in the matter, the parties to bear their own costs.

(S.R.Sathe, J)